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SUBJECT: JURY TRIAL SYSTEM DEBUTS IN KAZAKHSTAN

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1. (SBU) Summary: As of January 1, criminal defendants in Kazakhstan charged with aggravated murder have the right to request a jury trial. Under the system developed by Kazakhstani authorities, two judges, including the judge presiding at trial, participate on the jury along with nine lay jurors. The long awaited implementation of jury trials represents an important step toward promoting judicial transparency in Kazakhstan. However, the untested system faces several challenges, including lack of training for judges, lack of public awareness, and the potential for judges to dominate and control the deliberations. End summary.

WHO HAS A RIGHT TO TRIAL BY JURY?

2. (U) As of January 1, criminal defendants charged with aggravated murder have the right to request a trial by jury. The jury trial right applies only to those defendants charged under Article 291.2 of the Criminal Code, which defines aggravated murder and carries a possible death penalty. (Note: Kazakhstan imposed a moratorium on the death penalty in 2003. Defendants sentenced to death are in effect sentenced to life in prison, though they could be executed if the moratorium is lifted. End note.) Aggravated murder includes especially brutal murders, multiple murders, murders of persons carrying out official duties, murders connected with a sexual crime, hostage murders, etc.

3. (U) In order to obtain a trial by jury, the defendant in such a case must file a request when the termination of the preliminary investigation has been announced and all case files have been submitted for inspection. The motion for a jury trial will be considered during a closed, preliminary hearing, and the procurator, defendant, and defense counsel are required to be present. The law appears to create a presumption that the request for a jury trial will be granted if the defendant affirms the request during the hearing. The defendant may also choose not to request a jury trial. However, once the defendant's decision is affirmed by the judge during the preliminary hearing, the decision is final.

HOW ARE THE JURORS SELECTED?

4. (U) Juries will consist of nine lay jurors plus the two judges (presiding and second) hearing the case. There will also be two reserve jurors who will be dismissed at the close of proceedings if not needed. The court will create the preliminary pool of jury candidates for each case by randomly selecting persons from jury

lists composed within each oblast (region) by oblast officials. The secretary of the court notifies the candidate of their selection at

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least seven days prior to the trial. A person may serve on a jury only once per year.

15. (U) The preliminary pool of jury candidates will then undergo a screening process somewhat similar to the voir dire process used in United States. First, the judge will address all of the candidates and introduce them to the court, the parties, and the case, and outline the tasks of the jury. Candidates who are suspected or charged with a crime, unable to understand the language of the court in the absence of simultaneous translation, or who are otherwise physically unable to fully participate in the proceedings will be dismissed from service automatically. In addition, candidates may request relief from jury service if they have a "reasonable excuse," including that they are over 65 years old, have religious beliefs that prohibit them from participating in the administration of justice, are women with children under three years of age, or are professionals whose diversion will damage state or public interests.

16. (U) Next, the judge will question the remaining candidates about their knowledge of the case and their ability to serve as impartial jurors. The presiding judge asks the questions, but the procurator, victim, defendant, and defense counsel may submit written questions to the judge. The law requires the judge to dismiss biased candidates or candidates who have outside knowledge of the facts of the case. The parties may challenge for cause any juror candidate who is a victim, civil plaintiff or defendant, or potential witness in the case; any candidate serving as an expert, interpreter, or in another role in connection with the case; any candidate related to the parties, victim, lawyers, or investigator; or any candidate with a personal, direct or indirect interest in the case.

17. (U) If over 16 candidates remain at the conclusion of this stage, the judge will reduce the pool to 16 by randomly removing juror candidates through a blind draw. The procurator may then eliminate two candidates without cause, and the defendant three. Finally, the

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judge calls the remaining 11 candidates to the jury box in random order. The last two jurors called constitute the reserve jurors. The judge administers an oath to the jurors and explains their rights and duties.

WHAT IS THE ROLE OF THE JURY DURING THE TRIAL?

18. (U) During the evidentiary stage of the trial, the jury listens to the parties examine witnesses. Once the parties have concluded their examination of a particular witness, the jurors, via the presiding judge, may ask questions of the witness, the defendant, and/or the victim. The jurors may also review the physical evidence and documents submitted in the case. Following the evidentiary stage of the trial, the jury listens to the arguments of the parties. If parties refer to excluded or previously unexamined evidence, the judge will interrupt the party and instruct the jury not to consider that evidence.

19. (U) Following the arguments and rebuttal, the judge will explain the allegations and the appropriate law, summarize the evidence and positions of the parties, explain that a defendant's failure to testify shall not be considered a sign of guilt, and explain the method of deliberation and voting. The parties may object to the judge's instructions, and such objections may be grounds for an appeal.

HOW DOES THE JURY DETERMINE A VERDICT?

10. (U) After the presiding judge instructs the jury, the jury withdraws from the courtroom and the two judges formulate specific

questions to the jury concerning the criminal charges. The parties have the right to offer input to the formulation of the questions, but the presiding judge completes the final formulation of the questions in the secrecy of the deliberation room. Each criminal count will have the following three questions: 1) is it proven that the act took place; 2) is it proven that the act was committed by defendant; and 3) is defendant guilty of a crime. These questions may be followed by additional questions that may diminish or aggravate guilt, or call for the discharge of the defendant.

¶11. (U) The judges and jury then meet in the deliberation room, and the presiding judge chairs the meeting and serves as the foreperson of the jury. The deliberations are secret. The jurors may request explanations from the presiding judge on unclear issues, and such requests are not shared with the parties. After deliberating, the judges and jurors vote on the questions by secret paper ballot; the votes of the judges and jurors have equal weight. The presiding judge must count the votes in the presence of the jurors.

¶12. (U) The defendant is found guilty of a particular charge if there are a majority of affirmative votes for each of the first three questions. The defendant is found not guilty if there are a majority of negative votes (six or more) for any one of these three questions. If the defendant is found guilty, the jury also decides the sentence by open vote. Eight votes are required to impose a sentence of greater than 15 years, and a unanimous vote is required for the death penalty.

WHAT ARE THE POTENTIAL PROBLEMS WITH THIS SYSTEM?

¶13. (SBU) Although no jury trials have been conducted to date, there are a number of potential problems with this new system. Because the judges participate in the deliberations and vote along with the jurors, they are likely to dominate the deliberations. In addition, judges have received very little training concerning the new system, and there is virtually no awareness among the general public (the potential jury pool) of their rights and responsibilities as jurors.

¶14. (SBU) The American Bar Association/Central European and Eurasian Law Initiative (ABA/CEELI), in the interest of promoting effective implementation of the new law, conducted three mock jury trials in October of 2006. After analyzing the mock trials, ABA/CEELI issued several recommendations to improve the system. The recommendations centered on clarifying a number of procedural issues, as well as enhancing the impartiality of the jurors. Among other things, ABA/CEELI recommended that jurors be allowed to remain in the courtroom for all portions of the arguments by the parties, so their knowledge of the case is equal to that of the judge, and that any explanations of unclear issues given by the judge to the jurors be

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shared in advance with the procurator and defense counsel to prevent unfair prejudice to their cases. To date, Kazakhstan has not revised its jury trial legislation to address these concerns.

¶15. (SBU) USAID, at the request of the Supreme Court of Kazakhstan, has been working closely with the judiciary to prepare it for the implementation of jury trials. USAID has several concerns about the judiciary's lack of preparation, but is optimistic that the system will eventually improve through experience and the development of new procedures. (Details to be reported septel.)

COMMENT

¶16. (SBU) Comment: The initiation of jury trials in Kazakhstan is a welcome step toward transforming a frequently corrupt and easily influenced judicial system. However, the system is untested, and this fledgling effort toward greater independence and integrity could easily be overcome by lack of training and a structure that allows the judges to play a significant role in decision-making. Post and its partners at USAID will continue to monitor

implementation of the jury trial system and to advocate for additional practices and procedures to ensure the integrity of the system. End comment.

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